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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1949

No. 280 MISC.

UNITED STATES OF AMERICA ex rel.
PAUL PETERS,
Petitioner,

vs.

JOSEPH E. RAGEN, Warden, Illinois State
Penitentiary, Joliet, Illinois,
Respondent.

PETITION

for Certiorari to the Circuit Court of Appeals for the Seventh Circuit. Before Major, Chief Judge, Kerner and Swaim, Circuit Judges. There heard on appeal from the United States District Court for the Northern District of Illinois, Eastern Division, Philip L. Sullivan, Judge.

WM. SCOTT STEWART,
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Opinion of Circuit Court of Appeals Appended

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PETITION

To the Honorable Fred Vinson, Chief Justice of the United States, and Associate Justices of the Supreme Court of the United States:

A.

Summary Statement of Matter Involved.

The facts are well stated in the opinion rendered by the Circuit Court of Appeals. As Your Honors know, the Illinois legislature has recently enacted a law, intended to give prisoners a right to petition the local state courts,

where federal rights are claimed. Ill. Rev. Stat. 1949, Ch. 38, p. 1422, §§ 826 to 832. This law became effective after petitioner had exhausted all other remedies and after the United States District Court refused to issue the writ of habeas corpus. The law was in effect when the case was reached for argument in the Circuit Court of Appeals.

It has been decided by that Court that petitioner must return to the state courts, in order to resort to the new remedy, before it can be said that state court remedies have been exhausted—and that, only upon exhausting this new remedy, may he proceed in the federal courts.

B.

Basis of Court's Jurisdiction.

This Court may by certiorari have this cause certified to it for determination by virtue of Title 28, U.S.C., § 1254 as supplemented by the rules of this Court.

C.

Question Presented.

Was it proper for the Circuit Court to hold that petitioner must resort to a new remedy, provided during the pendency of his appeal, before it could be said that he had exhausted state remedies?

D.

Reasons for Granting Writ.

The Circuit Court of Appeals has decided an important question of federal law, which has not been, but should be settled by this Court. Rule 38(b).

Hundreds of pending cases are effected by this decision.

Prayer.

The Circuit Court has ordered the record here without cost. Petitioner prays that he be granted leave to sue *in forma pauperis*, that the writ of certiorari issue and such orders be entered as may seem just.

PAUL PETERS,
Petitioner,

WM. SCOTT STEWART,
Counsel for Petitioner.

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BRIEF IN SUPPORT OF PETITION.

I.

Opinions Below.

The trial court rendered no opinion. The opinion rendered by the Circuit Court of Appeals is in the record and no doubt will be reported by the time this petition reaches Your Honors. We append a copy.

II.

Jurisdiction.

The judgment to be reviewed was entered by the Circuit Court of Appeals on December 2, 1949. Your Honors have jurisdiction by virtue of 28 U.S.C., §1254. The claim of petitioner that he has been deprived of due process as guaranteed by the Fourteenth Amendment has been repeatedly presented to the state courts. The District Court was of the opinion that no federal right was involved. The Circuit Court has ruled that the facts set up in the petition for habeas corpus raise issues of such grave import that petitioner was entitled to a hearing thereon. It is contended that the decision of the Circuit Court that resort should be made to the new remedy provided by Illinois is an important question of federal law which should be settled by this Court as provided for in Rule 38(b).

III.

Specification of Errors.

If Your Honors decide that petitioner had sufficiently exhausted state remedies, the Circuit Court erred in not reversing the judgment and remanding this case for a hearing.

BRIEF.

I.

No cases which we might cite as authority have arisen since the new remedy was provided by Ill. Rev. Stat. 1949, §§ 826-32.

II.

The general rule concerning the necessity of exhausting state remedies has been correctly stated in the Circuit Court opinion.

III.

Your Honors have indicated, in denying certiorari recently, that prisoners in the Illinois penitentiaries must resort to the new remedy.

SUGGESTIONS.

The new remedy was brought about by the force engendered by expressions made by this Court concerning the lack of a proper and simple remedy by which a prisoner might obtain a hearing upon his claim that he had been deprived of federal rights. *Marino* v. *Ragen*, 332 U.S. 561.

It is only fair to the thousands of prisoners affected by the new legislation to warn them that unless they claim their rights within three years such rights might be deemed to have been waived. Also that if application is made to the state trial court and denied, further review must be sought within six months in the Illinois Supreme Court. Then the prisoners are required to apply to this Court within three months of any adverse decision by the Illinois Supreme Court.

We know something of the reasons behind the reluctance to be found on the part of Your Honors when it comes to any statement not absolutely necessary to the decision of the particular case, but here we are all confronted with a situation out of the ordinary. The entire matter is a mess which has become burdensome to the judges and lawyers, as well as the litigants.

A flood of petitions under the new act has been presented to the Chief Justice of the Criminal Court of Cook County. Judge Lynch has expressed doubts as to the constitutionality of the new act. Of course Your Honors are not going to pass upon that question, particularly in advance of a decision by the Illinois Supreme Court. The so-called new remedy may prove to be of no value.

The new act provides for the appointment of lawyers. Some prisoners have already chosen the particular lawyer

desired and have requested his appointment. Here arises another problem in which Your Honors will not be concerned, at least for the present. We mention some of the expected confusion in the hope that Your Honors will see fit to clarify the situation as far as may be deemed proper.

We doubt if counsel could contribute anything further if this case were set for argument or if briefs were submitted. A prompt decision seems more important than anything we might contribute. Your Honors are already familiar with the law involved and the practice prevailing.

Insofar as Your Honors deem it proper we request an opinion covering the question here submitted. If the Circuit Court is correct the federal courts in Illinois should have clear authority from Your Honors to dismiss all pending proceedings without prejudice to the filing of a petition under the new act. That is—all proceedings in which resort has not been had to the new act.

Respectfully submitted,

WM. SCOTT STEWART,
Counsel for Petitioner.

Appendix.

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

OCTOBER TERM AND SESSION, 1949.

No. 9983.

UNITED STATES OF AMERICA *ex rel.* PAUL PETERS, *Petitioner-Appellant,* vs. JOSEPH E. RAGEN, Warden, Illinois State Penitentiary, Joliet, Illinois, *Respondent-Appellee.*	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

December 2, 1949.

Before MAJOR, *Chief Judge,* KERNER and SWAIM, *Circuit Judges.*

Per Curiam. This is an appeal from an order dismissing petitioner's application for writ of habeas corpus but allowing his motion for certificate of probable cause for such appeal.

Petitioner is confined in the Illinois penitentiary under sentence of life imprisonment for the murder of his wife. To support his assertion of violation of rights guaranteed him by the Fourteenth Amendment to the Federal Constitution, he alleged the following facts. His wife's death

occurred while they were alone in their home. The first medical report indicated that her death had been from natural causes and he was released from custody. Later he was arrested and kept up day and night under constant questioning, and so abused and threatened that in order to secure his release from his tormentors he signed a paper not knowing its contents, but which now appears to be a confession of guilt. He states that such confession is false, and that the prosecution has no other evidence of his guilt; that the so-called confession of guilt includes a description of the method by which he was supposed to have accomplished the murder, but that such method was suggested to him by his questioners. He further asserts that he was at all times without counsel and advice and that he informed the court that he was unable to employ counsel and had none until after he told the judge he was not guilty; that later, when a lawyer spoke to him for the first time, he refused to listen to petitioner's story and said he did not believe it. Petitioner further asserts that he is physically handicapped, being crippled by paralysis of both legs, and that neither he nor his mother, his only friend and relative, is very familiar with the English language, and neither of them knew enough about procedure to know what happened at the hearing—that the proceedings were hurried, and he was confused and afraid to speak up for fear of receiving the death penalty as threatened. Petitioner further asserts that he learned for the first time after his confinement and too late to make a proper record, that the State had no proof of his guilt other than his confession, and that he might, by showing the facts, have been able to defeat the entire prosecution.

Respondent moved to dismiss the petition on the grounds that petitioner had been represented by counsel during his trial, and that he had withdrawn his plea of not guilty and entered a guilty plea after being fully admonished; and that

petitioner had presented all matters here sought to be raised to the Illinois Supreme Court by writ of error, which court held that the errors and the arguments offered to sustain them were entirely devoid of merit. *People* v. *Peters*, 396 Ill. 345, certiorari denied, 331 U. S. 855. It appears from the opinion in that case that the matter was there presented on the common law record only, and that the three errors assigned were: "(1) the record fails to show arraignment and plea; (2) the statute providing for the manner in which a plea of guilty shall be received was not complied with; and (3) the statute requiring that witnesses be heard in aggravation or mitigation was not complied with." Thus it does not appear whether the *facts* now relied upon to sustain the allegation of violation of constitutional rights were or could have been adequately presented on the common law record by writ of error.

It seems to us that the facts set up in the petition raise issues of such grave import that petitioner was entitled to a hearing thereon, and if they were not presented to the Illinois courts, as petitioner contends, he is still entitled to such hearing. It does not follow, however, that such hearing should be had in the District Court. Since the denial of the petition here involved, the State of Illinois has enacted a new remedy for the relief of any prisoner who asserts "that in the proceedings which resulted in his conviction there was a substantial denial of his rights under the Constitution of the United States or of the State of Illinois or both * * *." This statute, approved August 4, 1949 (Illinois Session Laws, 1949, p. 722), appears to provide adequate means for post conviction review in cases where constitutional rights are alleged to have been violated.

Counsel here contends that inasmuch as this remedy did not exist at the time of the proceedings in the District Court resulting in the judgment here appealed from, it

should not preclude consideration by this court of the merits of the case. We do not agree. The Supreme Court of the United States has always required scrupulous adherence by the federal courts to the doctrine of exhaustion of state remedies, as indicated by a very recent pronouncement of that principle in *Young* v. *Ragen,* 337 U.S. 235. However, as is there said, "of course Illinois may choose the procedure it deems appropriate for the vindication of federal rights." Until the recent enactment of the statute referred to above, such serious procedural difficulties stood in the way of consideration by the Illinois courts of asserted violations of constitutional rights as to render it doubtful whether any relief could be obtained in those courts. See *Young* v. *Ragen, supra; Marino* v. *Ragen,* 332 U. S. 561. It therefore became necessary in many cases for the federal courts to entertain applications for relief which would better have been considered by the state courts. With the new Act, however, this appears to be no longer true. And with the jurisdiction of federal courts circumscribed as it is in the case of prisoners held in custody pursuant to the judgment of a state court (New Federal Judicial Code, § 2254), we are of the opinion that if a new remedy is created at any time, such remedy must first be resorted to before it can be said that state court remedies have been exhausted. This is in accord with the action of the Supreme Court on October 10, 1949 in a series of cases involving applications by Illinois prisoners for discharge on writ of habeas corpus: "The petition for writ of certiorari in each of these cases is denied without consideration of the questions raised therein and without prejudice to the institution by petitioner of proceedings in any Illinois state court of competent jurisdiction under the Act of August 4, 1949 * * *." *Ferguson* v. *Ragen,* No. 103 Misc., C. C. H. U. S. Sup. Ct. Bull. p. 15.

Judgment affirmed.